

### **REMARKS**

It is respectfully submitted that the Notice of Non-Compliant amendment dated July 7, 2009, is in error. In this notice, it is argued that the status identifiers in non-elected claims 7, 11, 20 and 30-41 are incorrect. The identifiers in each of these claims are given as “Withdrawn – Currently Amended”, with the exception of claim 30 which is indicated as “Withdrawn.” However, the Notice of Non-Compliance indicates that the identifiers should be changed to state simply “Withdrawn.” This assertion is in error.

USPTO Official Gazette Notice from December 30, 2008, lists claims 7 claim identifiers which may properly be used in an amendment. The notice states that, “combining the status identifiers (Withdrawn) and (Currently Amended) into a single status identification, e.g., (Withdrawn – Currently Amended), may be used in those situations where a claim has been previously withdrawn as non-elected but Applicant wishes to amend the claim in an effort to rejoin the withdrawn (non-elected) claim with the elected invention.” It is thus evident that the indication of the noted claims as “Withdrawn-Currently Amended” is completely proper.

Moreover, with respect to the finality of the restriction requirement, it is argued at page 2 of the Notice of Non-Compliance that Applicants should, at this stage, “submit a petition...to withdraw the restriction requirement.” In fact, such a petition may be delayed until such time as appeal, or allowance of the present application. As noted in 37 C.F.R. 1.144, petition of a restriction “may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal.” Thus, no action on the restriction is necessary at this point. A prompt action on the merits of Applicant’s reply of May 12, 2009, is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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